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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/527,398      | 03/16/2000  | Maximino Aguilar     | AUS000147US1        | 1549             |

36736 7590 11/24/2003

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EXAMINER

SURYAWANSHI, SURESH

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

2185

DATE MAILED: 11/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/527,398

Applicant(s)

AGUILAR ET AL.

Examiner

Suresh K Suryawanshi

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10/28/03 amendments.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 August 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

1. Claims 1-38 are presented for examination.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action.
3. Claims 1-38 are rejected under 35 U.S.C. 102(e) as being unpatentable over Huh et al (US Patent no 6,584,559 B1).
4. The rejections are respectfully maintained and incorporated by references as set forth in the last office action.
5. Applicant's arguments filed on 10/28/2003 have been fully considered but are not persuasive.

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6. In the remarks, applicants argued in substance that (1) Huh does not show or disclose searching a storage device for an updated boot code, and updating the current boot code in the non-volatile memory; (2) Huh teaches that the permanent boot code cannot be updated.

7. As to point (1), Huh clearly discloses for looking whether any new firmware is present to upgrade or replace the old firmware [col. 4, lines 24-30] and also expressly teaches that the new firmware is typically stored on writeable, archival media [col. 3, lines 38-40]. Plus, the new firmware can be loaded from a disk or uploaded or downloaded from another computational component [col. 3, lines 44-46]. Therefore, as shown in fig. 3, the decision box "IS NEW FIRMWARE PRESENT?" clearly indicates of a search process.

8. As to point (2), Huh discloses that the boot code as whole comprises of one permanent initial boot initiating part [fig. 1, boot code 42] and second upgradeable or changeable part [fig. 1, firmware 54]. Firmware is an ordered set of instructions and/or data that is used in booting a computational system [col. 1, lines 16-17]. Huh expressly discloses that this permanent boot code directs the processor to read any new firmware as part of the boot sequence, which requires the processor to determine whether any new firmware is present to upgrade or replace the old firmware [col. 4, lines 24-30].

*Conclusion*

9. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). The practice of automatically extending the shortened statutory period an additional month upon the filing of a timely first response to a final rejection has been discontinued by the Office. See 1021 TMOG 35.

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 CFR 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Suresh K Suryawanshi whose telephone number is (703) 305-3990 or via e-mail, [suresh.suryawanshi@uspto.gov](mailto:suresh.suryawanshi@uspto.gov). The examiner can normally be reached on Monday-Friday: 9:00 AM – 5:30 PM, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas C. Lee can be reached on (703) 305-8717.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

**Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks

Washington, D.C. 20231.

The fax numbers for the organization where this application or proceeding is assigned are as follows:

- (703) 746-7238 [After Final Communication]
- (703) 746-7239 [Official Communication]
- (703) 746-7240 [Non-Official Communication]

and/or :

(703) 746-5668 (use this fax number, only after approval by Examiner, for "INFORMAL" or "DRAFT" communication).

Hand-delivered responses should be brought to:

Crystal Park II  
2121 Crystal Drive  
Arlington, VA 22202  
Fourth Floor (Receptionist).

Suresh K Suryawanshi

November 17, 2003

*Dennis M. Butler*

**Dennis M. Butler  
Primary Examiner**